Commenter: WorldCom, Inc.
Applicant: BellSouth
State: South Carolina
Date: November 14, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 97-208
In-Region, InterLATA Services in	)	
South Carolina	)	

REPLY COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH APPLICATION FOR INTERLATA AUTHORITY IN SOUTH CAROLINA

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Dated: November 14, 1997

Commenter: WorldCom, Inc.
Applicant: BellSouth
State: South Carolina
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EXECUTIVE SUMMARY

In addition to the reasons set forth in WorldCom's initial comments, there are three other reasons why BellSouth's application must be rejected. First, BellSouth has failed to show that it will exercise its "right to disconnect," recently crafted by the Eighth Circuit, in a manner that does not discriminate against requesting carriers. Disconnection may be achieved either electronically or physically. Electronic disconnection is less expensive, and typically is used by ILECs when dealing with their own operations. The Eighth Circuit did not state that the ILECs are allowed to use the most expensive and disruptive form of disconnection, solely in order to impose costs on competitors they do not incur themselves.

Nor has BellSouth explained how it will give CLECs access to its network in order to combine elements it has disconnected. Physical collocation is not required by law for this type of temporary access. BellSouth's own collocation procedures are designed for the physical placement of equipment on BellSouth premises incident to the interconnection of networks -- not for temporary access to combine disconnected elements.

Second, the initial comments are sufficient to establish that there are pending requests sufficient to satisfy Track A. To require more specific evidence of business plans to serve residential customers would ignore the practicalities of the situation.

Finally, BellSouth argues that the Commission should give deference to the decision of the South Carolina Public Service Commission. After the application was filed, the Alabama Public Service Commission concluded that BellSouth has not demonstrated OSS compliance, and the Florida Public Service Commission has approved a Staff Recommendation to the same

effect. Since BellSouth's OSS performance must be assessed on a region-wide basis, the decisions of other State Commissions in the region must be given at least as much weight.

Commenter: WorldCom, Inc.
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REPLY COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO BELLSOUTH APPLICATION FOR INTERLATA AUTHORITY IN SOUTH CAROLINA

WorldCom, Inc. hereby submits its reply comments on the Section 271 application for in-region interLATA authority filed by BellSouth Corporation et al. ("BellSouth") on September 30, 1997.

These reply comments address three independent reasons why BellSouth's application must be denied. First, BellSouth has failed to explain how it proposes to exercise the option recently crafted by the Eighth Circuit to disconnect combined elements before providing them to requesting carriers, in a manner that does not discriminate against requesting carriers and allows them to combine the elements to provide telecommunications service.

Second, the initial comments confirm that BellSouth's attempt to utilize Track B must be rejected.

Finally, because the application must be assessed on the basis of BellSouth's regionwide performance, the Commission must consider the decisions of all State Commissions within the region that have addressed the issues. The decision of the Alabama Public Service Commission

that BellSouth has not demonstrated checklist compliance, and the Florida Public Service Commission's recent approval of its Staff recommendation to the same effect, answer any argument that the South Carolina Commission's decision supporting the application might otherwise be entitled to deference.

1. BellSouth has not shown that it will exercise its right to disconnect previously-combined network elements in a manner that does not discriminate against requesting carriers and allows them to combine the elements to provide telecommunications service.

BellSouth makes it clear that it intends to exercise whatever legal rights it may have to prevent CLECs from obtaining combined network elements at cost-based rates. BellSouth Brief at 39-40. After BellSouth's application was filed, the Eighth Circuit held that where a CLEC orders unbundled network elements that are connected in the ILEC's network, the ILEC may disconnect the elements before providing them to the CLEC. Iowa Utilities Board v. F.C.C., Order on Petitions for Rehearing, 1997 WL 658718 (8th Cir. Nos. 96-3321 et al., October 14, 1997). WorldCom, with several other parties, is petitioning for certiorari from the Eighth Circuit's decision. However, assuming for present purposes that the decision remains the law, BellSouth's application is deficient because it has not demonstrated how it will exercise its new "right to disconnect" consistently with its other obligations under section 251 and the competitive checklist.

Two ILEC obligations under section 251 and the competitive checklist are particularly relevant to any exercise by BellSouth of its newly-established "right to disconnect": the obligation to provide "nondiscriminatory" access to network elements (§ § 251(c)(3),

271(c)(2)(B)(ii)), and the obligation to provide network elements in a manner that allows requesting carriers to combine them in order to provide telecommunications service (§ 251(c)(3)). Nothing in the Eighth Circuit's decision authorizes the ILECs to violate these obligations; indeed, the Eighth Circuit made it clear that it expected the ILECs to comply with their legal obligation to "allow entrants access to their networks" in order to combine elements the ILEC has disconnected. Iowa Utilities Board v. FCC, Order on Petitions for Rehearing, 1997 WL 658718 at *2 (Oct. 14, 1997).

The Commission has rulemaking authority under section 251(d)(2) to define the ILECs' duty to make network elements available, as the Eighth Circuit itself recognized. Iowa Utilities Board v. F.C.C., 120 F.3d 753, 794 n.10 (8th Cir. 1997). In addition, the Commission has authority in this proceeding to require a demonstration of compliance with the competitive checklist; and compliance with section 251(c)(3) is part of the competitive checklist. 47 U.S.C. § 271(c)(2)(B)(ii). Under both these grants of authority, the Commission has the responsibility to insure that BellSouth exercises its "right to disconnect" in a manner that is consistent with avoidance of discrimination and allows combination of unbundled network elements as mandated by the Act.

a. The "right to disconnect" cannot be exercised in a discriminatory manner.

The attached affidavit of David N. Porter explains that there are several instances in which the interconnection between different elements in a telephone network is customarily

controlled by electronics or software rather than manually. For example, the connection between the local loop and the central office, once physically established, is subsequently controlled electronically. If the ILEC disconnects service to a customer for any reason, no physical disconnection takes place; instead, the ILEC simply instructs its switch not to let non-emergency calls through. Similarly, when reconnection is requested, no physical operation is performed; instead, the ILEC instructs its system software to achieve reconnection. Porter Aff't ¶ 4.

A similar situation exists with respect to the switch-trunk connection. While a physical connection is established initially, it is subsequently controlled through system software. Thus when the ILEC decides to reroute traffic through different exit trunks, for example, it does not physically disconnect and reconnect wires; it simply gives the appropriate instructions through its system software. Porter Aff't ¶ 6.

Regarding nondiscriminatory access to OSS functions, the Commission has determined that a BOC must provide access "equivalent to the access it provides to itself." Ameritech Michigan Order, ¶ 128. The same nondiscrimination obligation governs here. If the ILEC, when acting for its own purposes, controls disconnection and connection through an electronic process, then use of a much more expensive and disruptive physical process when the ILEC is providing network elements to competing carriers is discriminatory. Porter Aff't ¶ 5. The Eighth Circuit ruled that the ILEC could disconnect; but it did not rule that the ILEC could deliberately use the most expensive method of disconnection, when a cheaper method is available and is used by the

ILEC when dealing with itself rather than a competitor.[1]

An ILEC which chooses physical rather than electronic disconnection, where the latter is available and used for internal purposes, would be vandalizing its network for the sole purpose of "impos[ing] costs on competitive carriers that incumbent LECs would not incur," contrary to "the requirement of § 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements." Local Competition, Third Order on Reconsideration, ¶ 44. The choice of physical disconnection virtually guarantees that customers opting for competitive services will suffer service outages of indefinite duration when the competitive carrier seeks to reestablish connections -- service outages that will have a devastating effect on competitors' ability to attract new business. The Commission's undoubted authority to enforce the non-discrimination requirement of section 251(c)(3) includes authority to insure that the ILECs exercise their "right to disconnect" in a manner that minimizes discrimination against competitive carriers.

Even if the ILECs' own internal operations were not an appropriate analogue to the process of connections incident to provision of unbundled elements to a competitor, the Act does not give ILECs carte blanche to impose unneeded expense on the carrier requesting access. Where there is no appropriate analogue in the ILEC's internal operations, the ILEC must show that the access it affords requesting carriers "offers an efficient competitor a meaningful opportunity to compete." Ameritech Michigan Order ¶ 141. If the ILEC deliberately chooses to

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[1] The Affidavit of Joseph Gillan, attached to Comptel's initial comments, estimates the difference between the costs of controlling connections physically and electronically, based on BellSouth's proposed non-recurring charges for a separated loop, port and cross-connection ($109.20 per subscriber line), and BellSouth's estimate of the cost to process an electronically-controlled PIC change ($0.80). Gillan Aff't ¶ ¶ 11-15.

physically pull wires out rather than utilizing its ability to control connection electronically, it must show that the expense imposed by this method -- to say nothing of the delays and interruptions of service -- is consistent with offering efficient competitors a "meaningful opportunity to compete."[2] Since BellSouth has not even begun to explain how it proposes to exercise its "right to disconnect" -- what type of notice it will provide competitors and what procedures it will follow in allowing access for purposes of combining unbundled network elements without disruption of service -- the Commission cannot assess BellSouth's compliance with the "meaningful opportunity to compete" standard.

Assuming that the ILEC exercises its "right to disconnect" by electronic rather than physical means, BellSouth must also explain the type of access it plans to offer requesting carriers so that they have a meaningful opportunity to combine disconnected network elements by giving the appropriate instructions to the ILEC's network software. Porter Aff't ¶ 9. This would necessarily include not only physical access to the ILEC's electronic network controls, but sufficient training of CLEC technicians so they are able to give the appropriate instructions to the ILEC's system software.

The ILECs will presumably insist on establishing a procedure which affords access without compromising their legitimate security concerns. But at this point, BellSouth has not

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[2] For example, physically disconnecting wires would cut a customer off from emergency services, while a computer disconnection can let 911 calls through. Entirely apart from the obvious public safety concerns, it seems doubtful that a threat of disruption in emergency services through physical disconnection for any customer switching service to a CLEC is consistent with affording the CLEC a "meaningful opportunity to compete," particularly when an alternative, less hazardous form of disconnection is available.

explained what procedure, if any, it has to afford requesting carriers the access they will need to electronically re-establish connections which the ILEC has broken. Thus the Commission has no basis to assess whether BellSouth will afford access in compliance with the non-discrimination standard of section 251(c)(3).

b. The "right to disconnect" must be exercised in a manner that allows the requesting carrier to recombine.

Even if issues of discrimination are put to one side, the ILEC must still comply with its obligation under section 251(c)(3) to provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Without knowing what procedures BellSouth intends to adopt to allow requesting carriers to combine elements that it has disconnected, the Commission is not in a position to assess BellSouth's compliance with section 251(c)(3). For example, how will BellSouth insure that the CLECs will be afforded a realistic opportunity to combine elements without significant disruption of service, particularly emergency service? On what terms will the CLEC technicians be afforded access? What are the arrangements for insuring that CLEC technicians are aware of the technical specifications that must be met in combining the disconnected elements? BellSouth must address these issues before the Commission can make an informed decision regarding its compliance with section 251(c)(3).

c. The collocation procedure does not resolve the problems arising from exercise of the "right to disconnect."

BellSouth points to collocation as a method it will use to enable CLECs to combine

elements in its network.[3] However, collocation is not required by the Act in order to provide CLECs with the access needed to combine disconnected network elements. And even if it were required, BellSouth's collocation procedure as presently in effect does not address the issue of compliance with BellSouth's obligation to provide unbundled elements in a manner that is nondiscriminatory and allows combination to provide telecommunications service.

1. Collocation is not required by the Act to provide CLECs with the access needed to combine network elements. The Act authorizes the CLECs to collocate in order to place their equipment on the ILECs' premises. The collocation procedure reflects the Constitutional requirement for just compensation, which comes into play when the CLECs place their equipment on ILEC premises and thus permanently occupy ILEC-owned space. But placement of CLEC equipment on ILEC premises, and permanent occupation of ILEC space, is simply not required when all the CLEC needs is temporary access to the ILEC network to re-establish connections the ILEC has terminated.

The language of the Act reflects the limitation of the collocation procedure to physical placement of CLEC equipment on ILEC premises. Section 251(c)(6) imposes on ILECs the duty to provide "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis added). The legislative history of section 251(c)(6) also establishes that it

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[3] "BellSouth's Statement allows CLECs to combine BellSouth network elements in any manner to provide telecommunications services. BellSouth will physically deliver unbundled network elements where reasonably possible, for example, unbundled loops to CLEC collocation spaces, as part of the network element offering, at no additional charge." Varner Aff't ¶ 74 (emphasis added).

was intended for collocation "of equipment necessary for interconnection at the premises of a LEC." House Rep. No. 104-204, 104th Cong. 1st Sess., at 73; Conf. Rep. No. 104-458, 104th Cong.. 2d Sess., at 120, reprinted at 1996 U.S. Code Cong. & Adm. News at 38, 132.

Section 251(c)(6) was enacted in response to a court decision denying the FCC authority to give CLECs "a license to exclusive physical occupation of a section of the LECs' central offices." Bell Atlantic Telephone Companies v. F.C.C., 24 F.3d 1441, 1446 (D.C.Cir. 1994), discussed in House Rep. No. 104-204, supra, at 73. The court concluded that conferring an "exclusive right of physical occupation" on the CLECs "would seem necessarily to 'take' [the ILECs'] property." Id. To support this conclusion, the court cited Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), which distinguished between "permanent occupation and a temporary physical invasion," explaining that only the former requires just compensation under the Takings Clause. Id., 458 U.S. at 434, discussing PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980).

The temporary access that a CLEC technician needs to re-establish connections terminated by the ILEC would be a mere "temporary physical invasion," not involving permanent placement of equipment on ILEC premises or any other form of "exclusive physical occupation" and thus not requiring compensation under either section 251 or the Takings Clause of the Constitution.[4]

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[4] BellSouth has agreed that the definition of physical collocation under the 1996 Act is the same as the definition adopted by the Commission in the order reviewed by the D.C. Circuit in Bell Atlantic -- i.e., a definition limited to placement of equipment in ILEC space. BellSouth's Florida Interconnection Agreement with Sprint states: "Physical Collocation is whereby 'the interconnection party pays for LEC central office space in which to locate the

In the Eighth Circuit, the ILECs expressed a preference for "allow[ing] entrants access to their networks" in order to combine network elements. Iowa Utilities Board v. FCC, Order on Petitions for Rehearing, 1997 WL 658718 at *2 (Oct. 14, 1997). That was the basis for the favorable decision they obtained from the Eighth Circuit on rehearing. Having invited such access, they are now hardly in the position to claim that it constitutes a "taking" of their property, demanding a level of compensation hitherto reserved for permanent -- and uninvited -- invasions.

The Commission's regulations confirm that the collocation procedure covers permanent placement of equipment on ILEC premises, not temporary access to reconnect unbundled elements. The regulations address the types of CLEC equipment that may be collocated (47 C.F.R. § 51.323(b), (c), (d)(3), (d)(4)); allocation of space (§ 51.323(f)); denial of physical collocation because of space limitations (§ 51.321(e), (f)); construction of physical collocation arrangements (§ 51.323(j)); interconnection between the equipment of different collocating carriers (§ 51.323(h); and connection of CLEC equipment to leased unbundled network transmission elements (§ 51.323(g)). None of this is relevant to temporary access to the ILEC network to re-establish connections the ILEC has terminated.

The regulations also provide -- as does the statute -- for denial of collocation for reasons of space or technical feasibility. 47 U.S.C. § 251(c)(6); 47 C.F.R. § § 51.323(a)-(f). But space is

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equipment necessary to terminate its transmission links, and has physical access to the LEC central office to install, maintain, and repair this equipment.'" Sprint Comments, Exh. C p. 79. The language quoted from the Agreement is from the Commission Order reviewed by the D.C. Circuit in Bell Atlantic. Expanded Interconnection with Local Telephone Company Facilities, 7 F.C.C.Rcd 7369 ¶ 39 (1992). It is noteworthy that this definition refers to CLEC access only for purposes of installing, maintaining and repairing collocated equipment -- not for installing, maintaining or repairing the connection between unbundled elements in the ILEC network.

clearly not a problem when the only issue is temporary access by a CLEC. And if the elements were previously connected in the ILEC network, then technical feasibility also would not be a problem -- unless the ILEC has done more than simply sever a connection, in which case the ILEC would have committed a plain violation of section 251(c)(3).

Indeed, even where the present collocation regulations address the security issue -- an issue which might also arise where CLEC technicians obtain temporary access to restore unbundled network element combinations -- the Commission's regulations address only "security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities." 47 C.F.R. § 51.323(i). This confirms that the collocation procedure addresses only the physical location of CLEC equipment in ILEC space -- not temporary access of CLEC technicians to the ILEC network.

2. Even if collocation were required by the Act, BellSouth's collocation procedure is not appropriate for situations in which all the CLECs need is temporary access to combine network elements. If applied to such situations, BellSouth's collocation procedure would impose excessive costs and place discriminatory burdens on the CLECs.

The attached affidavit of David N. Porter explains the several ways in which BellSouth's collocation procedure is not designed to afford temporary access to CLEC technicians to combine network elements disconnected by the ILEC. For example, the fee schedule for physical collocation established by BellSouth clearly assumes that collocation will involve the physical placement of CLEC equipment on BellSouth's premises, not merely temporary access by CLEC technicians to the ILEC network as needed to recombine disconnected elements. In

addition to an "application fee" of $3,850 (an outrageous figure if all that is involved is a one-time visit by a CLEC technician to reprogram the ILEC computer or reconnect some wires), the schedule imposes a "Space Construction Fee" of $4,500 as well as an unspecified "Space Preparation Fee." BellSouth SGAT, Atch. A p. 1. Even if this were reasonable as applied to construction of a cage at a LEC central office to house CLEC-owned equipment, it is totally unreasonable -- and entirely unrelated to the ILEC's costs -- as applied to the one-time access a CLEC technician would need to re-establish a connection between network elements.

A collocation procedure designed for the physical placement of equipment on ILEC premises is ill-suited for the present problem in other respects as well. Collocation is not only expensive; it is also time-consuming, with the typical collocation taking several months. Porter Aff't ¶ 11. Again, this may be appropriate and practicable where collocation is a one-time procedure the CLEC must undertake when it first seeks to introduce facilities-based competition in a particular market. But it is neither appropriate nor practicable if it must be undergone every time a CLEC acquires a new customer at a location that can be reached only through purchase of combined elements.

In addition, BellSouth imposes a 100 square foot minimum for physical collocation -- a limitation that may be appropriate for establishing the connection between the networks of the two companies, but is wholly inappropriate for the connection between, for example, an unbundled loop and a switch. Porter Aff't ¶ 10.

Nor is virtual collocation an answer to these problems. Virtual collocation is a method of connecting the ILEC and CLEC networks at a site other than the ILEC's own premises. But

where the connection between two network elements is involved, it is essential that the CLEC have access to the point of connection -- which is typically within ILEC premises.

Even if collocation were required by the Act in the "right to disconnect" situation, the Commission has authority to determine whether BellSouth's collocation procedure is consistent with its obligations under section 251(c)(3). For example, the Commission could determine that the 100 square foot minimum, while appropriate for collocation involving placement of equipment to connect the CLEC's network, is not appropriate merely for combining disconnected network elements. But until BellSouth provides more information as to how its collocation procedure would work in this situation, the Commission cannot make that type of determination.

2. BellSouth's application does not qualify under Track B.

The Department of Justice points out that four requesting carriers -- ITC DeltaCom, MCI, ACSI and AT&T -- have stated their intention to provide residential service in South Carolina. Evaluation of the Department of Justice, filed November 4, 1997, at 5-11 ("DOJ Comments"). The Department of Justice also points out that ITC DeltaCom -- which has provided the most specific information about its plans -- requested access and interconnection within the relevant time period, and is taking reasonable steps to provide telephone exchange service in South Carolina, exclusively or predominantly using its own facilities.

The Department of Justice, however, takes the position that the information supplied by ITC DeltaCom is not sufficiently specific with respect to its intended provision of residential service. Although ITC DeltaCom has an effective tariff for residential service, the Department

of Justice believes its evidence falls short because it has not stated when it plans to provide residential service and has not provided other details of its business plan. DOJ Comments at 8-9 and n.14.

WorldCom agrees with the Department of Justice that the Commission needs to review the Reply Comments before making a final determination whether the requests of ITC DeltaCom and others qualify under Track A. However, WorldCom believes that the Department is taking an overly stringent view of the type of evidence necessary to demonstrate that an otherwise qualifying request, if implemented, will result in service qualifying under Track A.

In determining the standard of specificity that the evidence on a particular issue must meet, the Commission must consider the practicalities of the situation. "A degree of certainty that is reasonable as a practical matter, having regard to the circumstances, is all that is required." State of Arkansas v. State of Tennessee, 269 U.S. 152, 157 (1925).[5] There are several elements in the present situation which make it difficult, as a practical matter, for facilities-based competitive carriers to be specific about plans to provide residential service.

First, the basic ground rules are still in a state of flux -- as witness, for example, the uncertainty created by the recent decision of the Eighth Circuit on provision of combined network elements.[6] In addition, the final prices to be charged for unbundled elements have not

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[5] See also Koftinow v. Commissioner, 52 T.C.M. (CCH) 261, 1986 WL 21606 at *4 n.5 (Tax Court 1986) ("the degree of proof which we require must be tempered by the practicalities of the situation").

[6] Iowa Utilities Board v. F.C.C., Order on Petitions for Rehearing, 1997 WL 658718 (8th Cir. Nos. 96-3321 et al., October 14, 1997).

been established, with the result that requesting carriers cannot calculate what their margins will be on residential service. Added to this is the uncertainty created by the lack of significant operating experience under OSS systems which BellSouth has only recently placed in service, as well as the continuing problems competitive carriers are experiencing in dealing with these systems.[7] Since many more businesses than residences may be served via new competing facilities in a small geographic area, these uncertainties have a greater impact on the degree of specificity that competitive carriers are able to achieve in their business plans for residential service.

Given the practicalities of the situation, the statements made by ITC DeltaCom and others should be sufficient to demonstrate that their requests for access, if implemented, will lead to service qualifying under Track A. Unless the Reply Comments clearly demonstrate that these statements are untrue, the Commission should find that BellSouth may not proceed under Track B.

3. The decision of the South Carolina Public Service Commission is not entitled to deference under the circumstances of this case.

Some of the initial comments pointed out that the decision of the South Carolina Public Service Commission is not entitled to deference because it adopted BellSouth's proposed findings word-for-word, thus demonstrating that it had not exercised independent judgment on

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[7] See WorldCom's initial comments at p. 8, and attached affidavit of Gary J. Ball at ¶¶ 5-9. 11-13, 18-23.

the issues involved.[8]

Since the initial comments were filed, another reason has emerged for not giving deference to the decision of the South Carolina Public Service Commission. On October 16, 1997, the Alabama Public Service Commission suspended its proceedings under section 271 on compliance of BellSouth's SGAT with the competitive checklist, pending the outcome of further proceedings on the adequacy of BellSouth's OSS and on establishment of permanent cost-based rates. With respect to OSS compliance, the Alabama Commission concluded:

> It appears to us that BellSouth's OSS interfaces must be further revised to provide nondiscriminatory access to BellSouth's OSS systems as required by § 251(c)(3) of the '96 Act. We have concerns that such nondiscriminatory access is not currently being provided.[9]

In addition, on November 3, 1997, the Florida Public Service Commission approved a Staff Recommendation concluding that BellSouth had not established OSS compliance.[10]

This Commission must "apply a uniform standard for all states in a BOC's region, and a

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[8] AT&T Comments at 46; MCI Comments at 9-10.

[9] Decision at p. 7. A copy of the decision of the Alabama Public Service Commission is attached to the DOJ Comments as Exhibit 5.

[10] Excerpts from the Staff Recommendation are attached as Exhibit 6 to the DOJ Comments. The Staff concluded that 1) interim rates cannot be used to support checklist compliance, 2) BellSouth "is not providing pre-ordering capabilities at parity with what it provides itself," 3) BellSouth "has failed to provide services which it can order electronically, on an equivalent basis to requesting carriers," 4) "staff does not believe that [BellSouth] can currently meet service order demand requirements," and 5) "the manner in which [BellSouth] performed its internal testing is insufficient to demonstrate that its systems and process are capable of responding to an order placed by an ALEC in a manner that is at parity with [BellSouth's] own abilities." See Staff Recommendation at pp. 104, 115, 119, 125, 126.

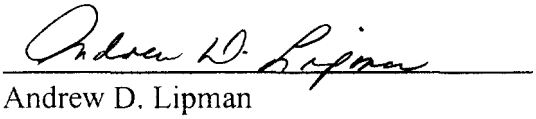
uniform standard that applies to all BOCs." DOJ Comments at 15. On the issues of cost-based rates and OSS compliance, there is no relevant difference between Alabama and South Carolina. In Alabama as in South Carolina, interim rates have been established, but the proceeding for establishment of permanent rates is still pending. With respect to OSS compliance, BellSouth itself admits that its systems operate on a region-wide basis.

This Commission is thus confronted with three State Commission decisions, reaching opposite conclusions with respect to the same issues and the same BellSouth OSS platform. In this situation, the Commission cannot give deference to conflicting State decisions. The Commission must exercise independent judgment under its statutory responsibility to make its own determination whether BellSouth has demonstrated compliance with the checklist. BellSouth has not made such a demonstration, and its application must be denied.

CONCLUSION

The Commission should deny BellSouth's application for interLATA entry.

Respectfully submitted,



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Dated: November 14, 1997

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ATTACHMENT

Affidavit of David N. Porter

City of Washington)
) ss:
District of Columbia)

AFFIDAVIT OF DAVID N. PORTER

1. My name is David N. Porter. I am Vice President - Regulatory Economics/Policy for WorldCom, Inc. I work with senior managers of WorldCom and its subsidiaries to develop its positions on public policy discussions before state, federal and international regulatory and legislative bodies. I oversee WorldCom's filings before the Federal Communications Commission ("FCC") and in state proceedings on economic and technical issues. I also collaborate on ongoing interconnection negotiations under the Telecommunications Act of 1996.

2. I graduated from the University of Illinois in 1968 with a Bachelor of Science degree in General Engineering and from Roosevelt University, Chicago in 1974 with a Masters in Business Administration. I am Registered as a Professional Engineer in Illinois, New Jersey and New York.

3. I began my telecommunications career in 1967 as an engineer for Illinois Bell. After assignments in traffic, outside plant, local and toll central office and toll facility engineering, I assumed duties as a service cost engineer responsible for designing and completing cost studies to support Illinois Bell rate filings and for establishing the price of equipment, land and buildings to be sold to or purchased from customers and other utilities. In 1976, I transferred to AT&T and was responsible for supervising numerous studies being completed by academicians and scientists intended to demonstrate the technical and economic harms of interconnecting competing communications networks and equipment. Later, I

worked on the AT&T team that negotiated and implemented the breakup of the Bell System. For two years following AT&T's divestiture of BellSouth and the other Bell Operating Companies in 1984, I managed the state and federal regulatory activities for AT&T Information Systems including its attempts to gain state approvals to offer shared tenant services. After that assignment, I was responsible for creating certain AT&T responses in the first triennial review of the Modification of Final Judgment. In the late 1980s, I was responsible for developing policy positions related to state regulatory issues and for managing AT&T's intrastate financial results. For several years thereafter, I advocated AT&T's interests at the FCC on matters concerning enhanced services and wireless services including spectrum management issues. My last position with AT&T was Director - Technology and Infrastructure. I was responsible for advocating AT&T's interests with Members of Congress, the FCC and their staffs on technical matters surrounding local exchange competition.

4. There are several instances in which the interconnection between different network elements in the ILEC's network is customarily controlled by electronics or software rather than manually. For example, the connection between a customer's premises via a local loop to the serving central office switch is typically established physically just once. Subsequent terminations and reprovision of service are controlled electronically. When one customer disconnects or discontinues service, the ILEC simply enters a service order through its OSS software directing the switch to process only emergency calls or calls to the LEC's business office. No physical operation is performed either at the customer's premises or in the central office, but disconnection is nevertheless achieved. When the next occupant requests service at that location, the ILEC again utilizes its OSS software to achieve reconnection, rather than performing any physical operation at the customer's premises or in the central office.

5. The reason the ILEC chooses to accomplish disconnection and reconnection electronically in the course of providing its own services to its own customers is that disconnection and reconnection through OSS software is vastly cheaper than physically sending a maintenance person to the site of connection in order to perform a physical connection or reconnection.

6. A similar situation exists with respect to the connection between switches and trunks. While a physical connection obviously exists and was established at one point in time, ILECs control that connection through their system software. For example, in its internal operations an ILEC might decide, in response to shifting traffic patterns, to reroute some traffic coming into a switch through different terminating or tandem trunks. In that situation, the ILEC is essentially disconnecting one route and establishing another. This can all be done electronically through system software.

7. Any competitive carrier that seeks to acquire an ILEC's unbundled switch element must be able to combine loops and trunks with the switch, regardless of who provides the loop and the trunk. While it is technically possible for the CLEC to lease the switch alone, without the trunk and/or loops, that would usually not make economic sense.

8. Should the ILEC disconnect the loop-switch or switch-trunk connection through instructions given via its system software, the only way for the CLEC to re-establish the combination would be through direct access to the same ILEC system software. The CLEC technician must have sufficient training on use of the ILEC's system to input the necessary instructions. The only other alternative would be for each CLEC to construct duplicate network software capable of giving similar instructions in parallel to the same ILEC switch. Different ILECs and manufacturers typically have different software control systems frequently with